

CITY OF BURLINGAME ORDINANCE NO. 2020-____
ADDING CHAPTER 6.10, “MINIMUM WAGE” TO TITLE 6, “BUSINESS LICENSES AND
REGULATIONS,” OF THE BURLINGAME MUNICIPAL CODE

WHEREAS, the State of California has enacted a minimum wage that will reach \$15.00 per hour in January of 2022; and

WHEREAS, recognizing the higher cost of living on the Peninsula and in an effort to support the stability of the community and economic security of local workers, the City Council of the City of Burlingame wishes to enact a citywide minimum wage to reach \$15.00 per hour before 2022; and

WHEREAS, a higher minimum wage rate protects public health, safety and welfare by requiring that employees are compensated in such a manner as to enable and facilitate their individual self-reliance within the City of Burlingame and thereby lessen both displacement and reliance on other public services and subsidies; and

WHEREAS, the City of Burlingame may adopt a higher minimum wage pursuant to the powers vested in the City under the laws and Constitution of the State of California including but not limited to the police powers vested in the City pursuant to Article XI, Section 7, of the California Constitution;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURLINGAME,
CALIFORNIA, ORDAINS that:

Section 1. PURPOSE AND INTENT.

The purpose and intent of this Ordinance is to adopt a new Chapter 6.10 of Title 6 of the Burlingame Municipal Code to provide a minimum wage of \$15.00 per hour on January 1, 2021 for most employers.

Section 2. ADDING CHAPTER 6.10 TO TITLE 6 OF THE BURLINGAME MUNICIPAL CODE.

Chapter 6.10 Minimum Wage is added to Title 6 of the Burlingame Municipal Code to read as follows:

Chapter 6.10 MINIMUM WAGE

6.10.010 DEFINITIONS.

As used in this Chapter, the following terms shall have the following meanings:

- (a) “Calendar week” shall mean a period of seven consecutive days starting on Sunday.
- (b) “City” shall mean the City of Burlingame.

(c) “Employee” shall mean any person who qualifies as an employee entitled to payment of a minimum wage from any Employer under the California Minimum Wage law, as provided under Section 1197 of the California Labor Code and wage orders published by the State of California Industrial Welfare Commission. Employees shall include Learners, as defined by the California Industrial Welfare Commission.

(d) “Employer” shall mean any person (including a natural person, corporation, non-profit corporation, general partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign), who directly or indirectly (including through the services of a temporary services or staffing agency or similar entity) employs or exercises control over the wages, hours or working conditions of any Employee.

(f) “Minimum Wage” shall have the meaning set forth in Section 6.10.020 of this Chapter.

6.10.020 MIMIMUM WAGE.

(a) Employers shall pay Employees no less than the Minimum Wage for each hour worked within the geographic boundaries of the City.

(b) The Minimum Wage paid shall be as follows: Beginning January 1, 2021, the Minimum Wage shall be an hourly rate of \$15.00.

(c) Beginning on January 1, 2022, and each January thereafter, the minimum wage shall increase by an amount equal to the prior year’s increase, if any, in the Consumer Price Index (CPI) for San Francisco-Oakland-San Jose as determined by the United States Department of Labor. The change shall be calculated by using the August to August change in the CPI to calculate the annual increase, if any. A decrease in the CPI shall not result in a decrease in the minimum wage.

(d) An Employee who is a Learner, as defined by California Industrial Welfare Commission Order No. 4-2001, shall be paid no less than 85 percent of the applicable Minimum Wage for the first 160 hours of employment. Thereafter, the Employee shall be paid the applicable Minimum Wage rate.

(e) An Employer may not deduct an amount from wages due an Employee on account of any tip or gratuity, or credit the amount or any part thereof, of a tip or gratuity, against, or as a part of, the wages due the Employee from the Employer.

(f) Exemptions: (1) First degree relatives (defined as the parents, siblings, or children) of a natural person who is an Employer under this ordinance or who is the sole owner or in sole control of an Employer are exempt from the minimum wage required by this ordinance, although all other relevant labor and employment laws continue to apply; and (2) persons who act as

independent contractors or who otherwise provide services without attaining the status of an Employee are exempt from the minimum wage required by this chapter.

6.10.030 NOTICE AND POSTING.

(a) By October 1 of each year, the City shall publish and make available to Employers a bulletin announcing the adjusted Minimum Wage rate, to take effect January 1 of the following year. In conjunction with this bulletin, the City shall, by November 1 of each year, publish and make available to Employers, in English and other languages as provided in any implementing regulations, a notice suitable for posting by Employers in the workplace informing Employees of the current Minimum Wage rate and of their rights under this Chapter.

(b) Each Employer shall give written notification to each current Employee, and to each new Employee at time of hire, of his/her/their rights under this Chapter. The notification shall be in English and other languages as provided in any implementing regulations, and shall also be posted prominently in areas at the work site where it will be seen by all Employees. Every Employer shall also provide each Employee, at the time of hire, with the Employer's name, address, and telephone number in writing. Failure to post such notice shall constitute a violation of this Municipal Code. The City is authorized to prepare sample notices and Employers' use of such notices shall constitute compliance with this subsection.

6.10.040 IMPLEMENTATION.

City may promulgate regulations for the implementation and enforcement of this Chapter. Any regulation promulgated by City shall have the force and effect of law and may be relied on by Employers, Employees and other parties to determine their rights and responsibilities under this Chapter. Any regulations may establish procedures for ensuring fair, efficient and cost-effective implementation of this Chapter, including supplementary procedures for informing Employees of their rights under this Chapter, for monitoring Employer compliance with this Chapter, and for providing administrative hearings or determining whether an Employer has violated the requirements of this Chapter.

6.10.050 ENFORCEMENT.

(a) Enforcement by the City. City may take any enforcement action set forth in Title 1 of this Municipal Code to address violations of this Chapter. Alternatively, City may elect to contract for enforcement services with a third party. If City elects to enter into such a contract, the City shall provide public, written procedures for such enforcement and any such enforcement shall be consistent with the due process rights established by Title 1 of this Code and relevant law.

(b) Private Rights of Action. An Employee claiming harm from a violation of this Chapter may bring an action against the Employer in court to enforce the provisions of this Chapter and shall

be entitled to all remedies available to correct any violation of this Chapter, including but not limited to, back pay, reinstatement, injunctive relief, or civil penalties as provided herein. An Employee who is a prevailing party in an action to enforce this Chapter is entitled to an award of reasonable attorney fees, witness fees, and costs.

(c) Remedies.

(1) The remedies for violation of this Chapter include but are not limited to: (A) Reinstatement, the payment of back wages unlawfully withheld, and payment of an additional sum as a civil penalty in the amount of \$50 to each Employee whose rights under this Chapter were violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of this Code or state law. (B) Interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date the wages are paid in full. (C) Reimbursement of the City's administrative costs of enforcement and reasonable attorney fees. (D) The City may require the Employer to pay an additional sum as a civil penalty in the amount of \$50 to the City for each Employee or person whose rights, under this Chapter, were violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of this Code or state law, where there has been a previous violation of this Chapter.

(2) The remedies, penalties and procedures provided under this Chapter are cumulative and are not intended to be exclusive of any other available remedies, penalties and procedures established by law which may be pursued to address violations of this Chapter. Actions taken pursuant to this Chapter shall not prejudice or adversely affect any other action, administrative or judicial, that may be brought to abate a violation or to seek compensation for damages suffered.

(d) Retaliation Barred.

(1) An Employer shall not discharge, reduce the compensation or otherwise retaliate against any Employee for making a complaint to the City, participating in any of the City's proceedings, using any civil remedies to enforce his or her rights, or otherwise asserting his or her rights under this Chapter. Within 120 days of an Employer being notified of such activity, it shall be unlawful for the Employer to discharge any Employee who engaged in such activity unless the Employer has clear and convincing evidence of just cause for such discharge.

(2) No Employer may fund increases in compensation required by this Chapter, nor otherwise respond to the requirements of this Chapter, by reducing the wage rate paid to any Employee, nor by increasing charges to them for parking, meals, uniforms or other items, nor by reducing the citation or other non-wage benefits of any such Employee, except to the extent such prohibition would be pre-empted by the Federal Employee Retirement Income Security Act.

(e) Retention of Records. Each Employer shall maintain for at least three years for each Employee, a record of his or her name, hours worked and pay rate. Each Employer shall provide

each Employee a copy of the records relating to such Employee upon the Employee's reasonable request.

6.10.060 WAIVER THROUGH COLLECTIVE BARGAINING.

The provisions of this Chapter may be waived in whole or in part with respect to employees covered under a collective bargaining agreement if all of the following circumstances apply: (a) Both parties to the collective bargaining agreement agree in writing to such waiver in whole or in part; and (b) the collective bargaining agreement contains provisions which specifically allow waivers of municipal minimum wage rates in excess of the contractually required wage rates for any group or groups of covered employees.

6.10.070 NO PRE-EMPTION OF HIGHER STANDARDS.

The purpose of this Chapter is to ensure minimum labor standards. This Chapter does not preempt or prevent the establishment of superior employment standards (including higher wages) or the expansion of coverage by ordinance, resolution, contract, or any other action of the City. This Chapter shall not be construed to limit a discharged Employee's right to bring a common law cause of action for wrongful termination.

6.10.080 FEDERAL OR STATE FUNDING.

This Chapter shall not be applied to the extent it will cause the loss of any federal or state funding of City activities.

Section 3. SEVERABILITY.

In the event any section, clause or provision of this Ordinance shall be determined invalid or unconstitutional, such section, clause or provision shall be deemed severable and all other sections or portions hereof shall remain in full force and effect. It is the intent of the City Council that it would have adopted all other portions of this Ordinance irrespective of any such portion declared to be invalid or unconstitutional.

Section 4. ENVIRONMENTAL DETERMINATION.

In accordance with California Environmental Quality Act (CEQA) Guidelines section 15378(b)(5), this action is categorically exempt from (CEQA) as an administrative activity that will not result in a potentially significant physical impact on the environment.

Section 5. PUBLICATION.

This Ordinance shall be published in a newspaper of general circulation in accordance with California Government Code Section 36933, published, and circulated in the City of Burlingame, and shall be in full force and effect thirty (30) days after its final passage.

LEGISLATIVE HISTORY AND EFFECTIVE DATE. This Ordinance was introduced on September 8, 2020 and adopted on _____, and shall be effective thirty days after its date of adoption.

Emily Beach, Mayor

I, Meghan Hassel-Shearer, City Clerk of the City of Burlingame, certify that the foregoing ordinance was introduced at a public hearing at a regular meeting of the City Council held on the 8th day of September, 2020, and adopted thereafter at a regular meeting of the City Council held on the _____ day of _____ 20__, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

Meaghan Hassel-Shearer, City Clerk